



Ministerie van Justitie

# Implementing Framework Decision 947: the Dutch Approach

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CAN I HAVE ALL YOUR  
DUTCHMEN WITH ALTERNATIVE  
SENTENCES?

HAB ICH NICHT,  
BUT CAN I TAKE OVER  
ALL YOUR PENAL  
SENTENCES?





1. Scope and abbreviations
2. The implementation process in The Netherlands
3. Issues
4. Information needs
5. Conclusion



### **Scope project: FD's 909 and 947, possibly 829**

- 909: Transfer of Prisoners
- 947 Transfer of Alternative Sanctions/Probation Supervision
- 829: Transfer of Alternatives to Pre-trial Detention

### **Abbreviations**

- **WOTS:**  
Enforcement of Criminal Judgements Transfer Act
- **WEOS**  
Mutual Recognition and Transfer of EU Criminal Judgements

## Implementation efforts so far



- Working parallel with legislation
- Design of new working processes
- Assessing impact (e.g. New tasks, records to be kept) for involved organisations
- Expected numbers of ‘transfers’
- Intensively working together with a group of field-experts



- **First draft document of the Dutch law available**
  - One law for both framework decisions
- **Decentralized projects analyses the impact in more detail. Main questions:**
  - what is their effort in carrying out the current WOTS cases and;
  - what changes need to be made to carry out the future cases on WEOS?
- **Promoting cooperation and fine tuning between all the agencies involved in the implementation of the FD's**

# Project plan

## – Activity phases



Monitoring the impact of the legislative process, developing international working relationships, building up knowledge, updating regulations

- Jan-Mar: studying the working processes for each organisation
- Mar-Apr: Quick scan of information requirements and current IT systems
- Sep-Dec: detailed impact analysis at the organisational level
- Continuous: better insights into size of target groups

- Set up and evaluate pilot
- Operationalise processes and IT systems
- Logistical process for transfers
- P&C and management information
- Education and training
- Continuous: better insights into size of target groups

- Monitoring and steering
- 1 July 2012: end of WEOS project

## Inflow and outflow custodial sentences



Country of origin	Incoming	Leaving
Germany	203	12
Spain	124	19
UK	52	
Belgium	44	13
France	33	4
Other	20	8
Italy	20	6
Sweden	13	
Denmark	7	
Greece	7	
Portugal	7	3
Ireland	6	
Luxemburg	4	
Austria		3
Portugal		3
Lithuania		3
Bulgaria		2
Poland		6
Romania		5
<b>Totals</b>	<b>543</b>	<b>81</b>





- Change needed in The Netherlands to stimulate non-custodial sentences/measures to foreigners living in the EU
- Central coordination of the probation tasks by setting up an international probation desk
- Knowing what amounts of transfers to be expected
- How to built up trust in probation system abroad

## Main organizational choices



- Competent Authority: Public Prosecution Office
- Advised by the probation service
- No formal role foreseen for judiciary in deciding on acceptance and possible adaptation to national law

## 1. Change needed to sentences/measures to



## stimulate non-custodial foreigners

- Statement: FD powerful instrument to do away with “imprisonment discrimination”
- Change needed to substitute fines/custodial sanctions to non-custodial sanctions and measures
  1. Reliable system of “detection” of potential transferable sanctions and change in criteria for pre-sentence reports
  2. Well developed paths of international information transfer helpful in advising. Bottleneck: run-time norms of crime procedures
  3. Mutual trust in the executing possibilities and quality of member states
  4. Easily accessible and reliable information on executing possibilities in EU states if necessary
  5. Bottleneck: pre-trial detention

## 2. Central coordination of the Probation Tasks



- Advantages of centralization
  - Initial low expected numbers of transfer, cases distributed under regions
  - Developing knowledge / experience → quality
  - Uniformity
  - Visibility, approachableness, incl. Helpdesk function
- Coordination of all tasks concerning “transfers”
  1. Central contact point (national/international)
  2. Pre-sentence reports
  3. Advising competent authority
  4. Preparing / translating transferred probation sentence before assigning to local probation service
  5. Role in developing database
  6. Helpdesk function
  7. Monitoring function

### 3. Knowing what amounts of transfers to be expected



- Difficult to estimate the amount of transferred probation measures
  - Currently only few transfers: Netherlands 10-15 very year- border regions
  - Questions to be answered
    - ✓ What is the extent to which foreigners living in EU and natives, comparable on offence, criminal history, background, do get other types of sentences
    - ✓ From which sentences do we expect substitution to transferable non-custodial sentences and measures? (e.g. 1-4 months imprisonment → labour penaltie)
    - ✓ What is a reasonable fraction of substitution to expect( (25%)
  - Estimation outgoing transfers from the Netherlands
    - 50 community service / labour penalties
    - 10-20 conditional sentences
    - 5 supervisions “conditional release”

## 4. How to promote confidence in each other system



- Find out what your focus countries are and concentrate on them (conferences, visits)
- Make fact sheets on probation measures in your country and distribute them in Europe; will be used by the judiciary and probation in the other countries
- Making an international database
  - Questionnaire Belgium project, to be completed before end May, focussed on legal system and main choices
  - Project (in preparation NOMS): deeper inside in the reality of probation practice; identifying and solving upcoming problems in implementation

## Issue 947: probable scenario



### **Current situation: Alternative sanctions mainly expected from neighbouring countries**

- Transfer of alternative sanctions and supervision measures, without dedicated implementation programmes, will be especially expected in border region (Belgium and Germany) (+/- the current situation)

### **Small numbers of conditional release transfers**

- Transfer of conditional release (after custodial sentence) as such will be small in numbers as the custodial sentence will be transferred (including conditional release)



## **Information needed before sentencing**

- In The Netherlands nearly no conditional sentences/alternative sentences are made without a pre-sentence report being available (information about risk of reoffending, criminogenic need, chances of success of an alternative sanction/probation measure). Is this typically Dutch? How to organise to make this information available in cooperation with the executing states in a short period of time?

## **Sharing of information through a database or knowledge network**

- Judges and public prosecutors will want information on the execution options in other member states before they consider giving a foreigner an alternative sanction. What modalities are there? How is supervision organised? This information needs to be exchanged internationally (database)

## **Additional information needed for successful alternative sanctioning**

- To make the right decision on the execution of the Alternative Sanction/Probation Measure in the executing state, it is desirable to receive any probation reports or other information on such factors as behaviour, previous convictions and criminogenic factors as an attachment to the certificate.



## To conclude with.....



- FD is complex
- We did certainly not start too early!
- Cooperation between EU MS
  - Continuous platform needed
  - Belgium project 947
  - Follow up project NOMS and CEP
- Making an international database
  - Questionnaire Belgium project, to be completed before end May, focussed on legal system and main choices
  - Project (in preparation NOMS/CEP): deeper inside in the reality of probation practice; identifying and solving upcoming problems in implementation